

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHNATHAN HOWARD KIGER,

Plaintiff,

v.

TRACY JOHNSON, et al.,

Defendants.

No. 2:23-cv-1263 DC SCR P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action under 42 U.S.C. § 1983. On July 21, 2025, the undersigned screened plaintiff's third amended complaint and determined it failed to state any claims upon which relief can be granted. (ECF No. 31.) Specifically, plaintiff failed to plead facts linking any of the twenty named defendants to the alleged unlawful interference with his legal mail. Plaintiff was given thirty days to file a fourth amended complaint. (Id.) Plaintiff now requests a ninety-day extension of time to file his amended complaint. (ECF No. 33.) For good cause shown, plaintiff's request is granted.

Plaintiff has also filed a motion for appointment of counsel. (ECF No. 32.) For the reasons set forth below, the undersigned finds that plaintiff has not demonstrated the exceptional circumstances necessary to warrant the court to request the voluntary appointment of counsel.

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PLAINTIFF'S MOTION TO APPOINT COUNSEL

I. Plaintiff's Motion

Plaintiff states that he is continuing to face unlawful interference with his legal mail. (ECF No. 32 at 1-2.) However, he has been unable to identify the individuals responsible. He requests the assistance of counsel to help him identify these individuals and cure the linkage problems identified in the court's screening orders. (*Id.* at 2.)

Plaintiff claims his imprisonment is preventing him from obtaining the "significant investigative information" needed to identify defendants and prison officials will not assist. (ECF No. 32 at 2-3.) He is indigent and cannot hire a private investigator on his own. (*Id.* at 3.) Further, plaintiff also has a visual impairment that causes migraine headaches from excessive reading. As a result, he is unable to study federal law or navigate the complex legal issues involved in his case. (*Id.*) Finally, plaintiff claims reprisal has increased since the court allowed him to file an interrogatory regarding prison mailroom staff. (*Id.*)

II. Legal Standard

District courts lack authority under 28 U.S.C. § 1915 to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request that an attorney voluntarily represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). The test for exceptional circumstances requires the court to evaluate the plaintiff's likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not establish exceptional circumstances that would warrant a request for voluntary assistance of counsel. *Wood*, 900 F.2d at 1335; *Riley v. Franke*, 340 F. Supp. 3d 783, 787 (E.D. Wis. 2018).

Beyond § 1915(e)(1), other sources of law may implicate a request for counsel. For example, appointed counsel may be required in a civil proceeding as an accommodation for a

litigant who is disabled. See Franco-Gonzalez v. Holder, No. 10-cv-02211 DMG (DTBx), 2013 WL 3674492, at *3-*9 (C.D. Cal. Apr. 23, 2013) (granting summary judgment to class of mentally disabled individuals in civil immigration proceedings on their request for appointed representatives under the Rehabilitation Act). Due process may also require appointment of counsel in certain proceedings. See Turner v. Rogers, 564 U.S. 431, 444-45 (2011) (analyzing request for appointment of counsel in civil proceeding under the Mathews v. Eldridge, 424 U.S. 319 (1976), procedural due process framework).

III. Discussion

Having considered the authorities above, the court finds that plaintiff has failed to meet his burden of demonstrating exceptional circumstances warranting the appointment of counsel at this time. Plaintiff's indigency and lack of legal education and investigation resources are circumstances common to most prisoners. While the court is sympathetic to plaintiff's visual impairments, his pleadings and investigation so far – particularly his efforts between his second and third amended complaint to identify the prison's mailroom staff – suggest to the court that he is able to meaningfully prosecute his case. Cf. Franco-Gonzalez, 2013 WL 3674492, at *4 (appointing counsel under Rehabilitation Act where plaintiffs' mental health disabilities prevented their meaningful participation in court proceedings).

The court recognizes that it is extremely difficult for plaintiff to identify the mailroom staff responsible because the alleged mail interference is not happening in his presence. But as the court explained in the screening order, plaintiff must do more than list twenty people who are potentially responsible for the alleged violations of his rights. Plaintiff can provide facts, based on information and belief, that support reasonable inferences of a defendant's interference with his legal mail. Examples of such facts include the person's position and responsibilities in the mailroom, their shifts, which housing units they are responsible for, and so forth. Should plaintiff choose to file a fourth amended complaint, he is advised to include such facts to the best of his abilities.

Finally, regarding the alleged reprisals for his investigation, plaintiff is advised that he may file a new action or seek to supplement his complaint pursuant to Rule 15(d) of the Federal

Rules of Civil Procedure. That rule states:

On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

Fed. R. Civ. P. 15(d).

CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for the appointment of counsel (ECF No. 32) is denied without prejudice;
2. Plaintiff's motion for an extension of time (ECF No. 33) is granted; and
3. Plaintiff is granted ninety days from the date of this order in which to file a fourth amended complaint.

DATED: August 20, 2025


SEAN C. RIORDAN
UNITED STATES MAGISTRATE JUDGE